



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**MILES J. NELSON, M.D.
DECISION AND ORDER**

On January 30, 2018, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Miles Nelson, M.D. (hereinafter, Registrant), of Santa Fe, New Mexico. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposes the revocation of Registrant's Certificate of Registration on the ground that he has "no state authority to handle controlled substances" in New Mexico, the State in which he is registered with the DEA. *Id.* (citing 21 U.S.C. 824(a)(3)). It also proposes the denial of "any applications for renewal or modification of such registrations and any applications for any other DEA registrations." OSC, at 1 (citing 21 U.S.C. 824(a)(3)).

Regarding jurisdiction, the Show Cause Order alleges that Registrant holds DEA Certificate of Registration No. BN3803423 at the registered address of 721 Old Santa Fe Trail, Santa Fe, NM 87505 and a mailing address of 17 Camino Monte Feliz, Santa Fe, NM 87505. OSC, at 1. This registration, the OSC alleges, authorizes Registrant to dispense controlled substances in schedules II through V as a practitioner. *Id.* The Show Cause Order alleges that this registration expired on October 31, 2017 and that Registrant filed an untimely renewal application on November 10, 2017. *Id.*

The substantive ground for the proceeding, as alleged in the Show Cause Order, is that Registrant is "currently without authority to practice medicine or handle controlled substances in New Mexico, the state in which . . . [he is] registered with DEA." *Id.* at 2. Specifically, the Show Cause Order alleges that Registrant's "New Mexico medical license is currently in an

‘Inactive While Under Investigation’” status. *Id.* Further, according to the OSC, Registrant’s New Mexico controlled substances license expired on October 31, 2017. *Id.*

The Show Cause Order notifies Registrant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The Show Cause Order also notifies Registrant of the opportunity to submit a corrective action plan. OSC, at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

By letter that the Government states it received on February 28, 2018, Registrant timely submitted a corrective action plan (hereinafter, CAP).¹ Request for Final Agency Action dated April 18, 2018 (hereinafter, RFAA), at 2; *see* Government Exhibit (hereinafter, “GE”) 6.² In his CAP, Registrant admits that he does not have authority in New Mexico to practice medicine or handle controlled substances. CAP, at 1. Registrant’s CAP also states that he voluntarily inactivated his New Mexico medical license in advance of receiving medical treatment, that he “inadvertently neglected to renew . . . [his] New Mexico controlled substances license” at around the same time, and that his application to renew his DEA registration “was considered untimely.” *Id.* The CAP states that Registrant “fully” expects the New Mexico Medical Board to reactivate his medical license in March, 2018, that he will then reapply for a New Mexico “controlled substances license which . . . [he] fully expect[s] to be issued,” and that “with a valid New Mexico medical license and a state issued controlled substances license . . . [he] will reapply to the DEA for renewal of . . . [his] DEA registration.” *Id.*

¹ A hand-written date which, other than indicating February and 2018, is not fully legible appears on the CAP next to Registrant’s signature.

² Also attached to the RFAA is a Declaration of Service of Order to Show Cause by a DEA Diversion Investigator (hereinafter, DI Declaration). GE-5. According to the DI Declaration, two Diversion Investigators personally served the OSC on Registrant at Registrant’s residence on February 6, 2018. DI Declaration, at 1.

The Assistant Administrator of the Diversion Control Division denied Registrant's CAP by letter dated March 5, 2018. GE-7.

In its RFAA, the Government represents that, "At least 30 days have passed since the time the . . . [OSC] was served on Registrant. Registrant has not requested a hearing." RFAA, at 2. The Government requests the issuance of a "Final Order revoking Registrant's DEA registration." *Id.* at 4.

Based on the DI Declaration, the Government's written representations, and my review of the record, I find that the Government personally served the OSC on Registrant on February 6, 2018. I also find that more than 30 days have now passed since the date the Government served the OSC. I find that Registrant timely submitted a CAP and that the Assistant Administrator of the Diversion Control Division denied Registrant's CAP by letter dated March 5, 2018. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent him, requested a hearing or submitted a written statement while waiving Registrant's right to a hearing. Accordingly, I find that Registrant has waived his right to a hearing and his right to submit a written statement. 21 CFR 1301.43(d). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

FINDINGS OF FACT

Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. BN3803423, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 721 Old Santa Fe Trail, Santa Fe, NM 87505. Certification of Registration History (GE-1), at 1. This registration expired on October 31, 2017.

From that day forward, Registrant could not legally obtain, store, administer, prescribe, or dispense a controlled substance under this registration. *Id.*

On or about November 10, 2017, Registrant submitted an untimely online renewal application for DEA registration No. BN3803423 at the address of 721 Old Santa Fe Trail, Santa Fe, NM 87505. *Id.* This renewal application currently is in a renewal pending status. *Id.* The RFAA, the OSC, and this renewal application all concern DEA registration No. BN3803423. *See id.* Registrant currently has no other pending or valid DEA registration in New Mexico. *Id.*

The Status of Registrant's State Medical and Controlled Substance Licenses

The record before me shows that the status of Registrant's New Mexico medical license has changed several times over the course of the last 12 months or so. According to the most recent evidence in the record, Registrant inactivated his medical license on September 7, 2018. Government's Withdrawal of Its Request for Dismissal of Order to Show Cause and Government's Renewed Request for Final Agency Action dated September 13, 2018, Attachment, at 1-2. According to New Mexico's online records, of which I take official notice, Registrant's New Mexico medical license is "lapsed."³ New Mexico Medical Board Website, "MD & PA Lookup" Quick Link, <http://www.nmmb.state.nm.us> (last visited January 17, 2019).

The record before me shows that Registrant's New Mexico controlled substance license No. CS00021066 expired on October 31, 2017. Certification of New Mexico Board of Pharmacy Controlled Substance License dated January 4, 2018 (GE-4), at 1; New Mexico

³ Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration within 20 calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have 20 calendar days to file a response.

Regulation and Licensing Department Website Screen Print dated April 18, 2018 (GE-9), at 1. Indeed, Registrant admitted in his CAP that he “inadvertently neglected to renew” his New Mexico controlled substance license and that it expired on October 31, 2017. CAP, at 1. Further, New Mexico’s online records, of which I take official notice, show that New Mexico controlled substance registration No. CS00021066 issued to Registrant was renewed on July 9, 2018 and expired on October 31, 2018.⁴ New Mexico Regulation & Licensing Department “Web Lookup/Verification,” <http://verification.rld.state.nm.us> (last visited January 17, 2019).

Accordingly, I find that Registrant currently is neither licensed to engage in the practice of medicine nor licensed to dispense controlled substances in New Mexico, the State in which he is registered with the DEA.

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

⁴ *See* footnote 3. If Registrant disputes this finding, he may do so according to the terms stated in footnote 3.

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess State authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper, supra*, 76 FR at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988), *Blanton, supra*, 43 FR at 27,617.

Under longstanding Agency precedent, DEA revokes the registration of a practitioner who lacks State authority to handle controlled substances even when the practitioner’s State authority was suspended summarily or pending a final decision on the merits. *See, e.g., Bourne Pharmacy, Inc.*, 72 FR 18,273, 18,274 (2007). Similarly, the facts that a State immediately suspended a registrant’s registration and that the registrant may, some day, regain his State registration to dispense controlled substances do not change the salient fact -- the registrant is not currently authorized to handle controlled substances in the State in which he is registered. *Mehdi Nikparvarfard, M.D.*, 83 FR 14,503, 14,504 (2018).

Here, Registrant admitted that he did not have authority in New Mexico to practice medicine or dispense controlled substances when he submitted his CAP. Further, New Mexico's online records show that Registrant is currently not licensed to practice medicine or to handle controlled substances. As such, Registrant does not have authority to dispense controlled substances in New Mexico at this time. N.M. Stat. Ann. § 30-31-13(D) (Westlaw, current through the end of the Second Regular Session of the 53rd Legislature (2018)) (Practitioners must be registered to dispense any controlled substances.). Registrant, therefore, is not presently eligible for a DEA registration. Accordingly, I will order that Registrant's DEA registration be revoked and that any pending application regarding a registration in New Mexico be denied. 21 U.S.C. 824(a)(3); 21 U.S.C. 823(f).⁵

ORDER

Pursuant to 28 CFR 0.100(b) and the authority thus vested in me by 21 U.S.C. § 824(a), I order that DEA Certificate of Registration No. BN3803423 issued to Miles Nelson, M.D., be, and it hereby is, revoked. Pursuant to 28 CFR 0.100(b) and the authority thus vested in me by 21 U.S.C. 823(f), I further order that any pending application of Miles Nelson, M.D., to renew or modify this registration, as well as any other pending application by him for

⁵ Given my finding that Registrant is not currently authorized to handle controlled substances in New Mexico, I find that his CAP provides no basis for me to discontinue or defer this proceeding. 21 U.S.C. 824(c)(3).

registration in the State of New Mexico, be, and it hereby is, denied. This Order is effective
[insert Date Thirty Days From the Date of Publication in the Federal Register].

Date: January 17, 2019

Uttam Dhillon
Acting Administrator

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